Human Events *A Weekly Analysis for the American Citizen*

Editorial Office 1710 Rhode Island Ave., N. W., WASHINGTON 6, D. C. *Telephone* NATIONAL 2066

VOL. VII, No. 18, *Issue Number* 327, MAY 3, 1950 ★ *Editor:* FRANK C. HANIGHEN

UNIVERSITY OF MI... RECEIVED MAY 12 1950

THE AMERICAN REVOLUTION LOST

by Frank Chodorov

The case of the American people was stated in the Declaration of Independence. The kind of government they thought it fitting for men to live under was one that guaranteed to the individual certain rights inhering to him by virtue of existence. When a government failed in that function or presumed to invade those rights, the moral thing to do was to kick it out. That was what they proceeded to do to the British Crown; the government that held a quite contrary position.

After Yorktown came the business of formulating a pattern of government along the lines laid down in the Declaration. The metaphysical concept of rights had to be implemented with a practical program. For better or worse, the Founding Fathers came up with a Constitution; and that, in the final analysis, became the end-product of the Revolution. It was in effect what the Americans had fought for.

For many years -- until 1913, as we shall see -- the Constitution did well by the Declaration. It did so by the simple expedient of restraining the hands of the government. Having had experience with a government which recognized no bounds to its will, the Founding Fathers put into their formula specific limitations which, they believed, would forever keep the government of the United States in leash. They planned on the principle that the freedom of the people is in reverse proportion to the power of the government.

By virtue of these checks and balances, the American citizen enjoyed three immunities against his government: in respect to his property; in respect to his person; and in respect to his conscience. Despite numerous attempts to invade these immunities -- political power is without inherent restraints -- the chains of the Constitution held firm.

Two of the Constitutional limitations showed particular perspicacity. One was that Federal authority is specifically confined to the powers enumerated; should any question come up as to powers not listed in the document, it was to be taken for granted that such powers reside in the local state governments.

The purpose of this provision was to thwart any tendency toward centralization. Experience had taught these Americans that all governments bear watching, that none should be trusted out of sight. If government is a necessary evil of social integration, its propensity for

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evil-doing can be minimized by vigilant surveillance. Local government is more trustworthy simply because it can be the better watched.

Even more important, as a safeguard of the immunities, was the limitation put on the taxing powers of the Federal Government. About the only revenues generally conceded to the new authority were levies on imports. But these would yield, as Hamilton knew, hardly enough to maintain the establishment he had in mind, and he made a strong and successful plea for the power to levy internal excise taxes. Beyond that the Americans would not go; any suggestion for a direct tax on property would have been laughed at.

And so, for well over a century the Federal Government had to manage on what it could pick up from import duties and excise taxes. That was enough to keep it weak, unable to break through the immunities.

Ever since Rousseau, political science has stressed the will of the people as the source of sovereignty. Americans particularly make a point of it. However, when you look into the reality of sovereignty, American or European, ancient or modern, you see that it is political power fertilized with money; the more money, the more sovereignty. If the people retain possession of their property, the government is beholden to them; but, if the government can lay hands on their property, the incidence of sovereignty shifts accordingly.

II

In 1913 the character of the American Constitution was completely altered. First of all, the Sixteenth Amendment violated the principle of private property. We have become so inured to the income tax that we do not recognize in it the socialistic doctrine that the State has prior claim on all production. What it permits us to retain for ourselves -- the exemption -- is a concession, not a right; the exemptions and the rates are alike subject to the convenience of the State. It would have been more congruous if a confessed follower of Karl Marx had written the Sixteenth Amendment.

With the immunity of property gone, the immunities of person and of conscience could not long stand up. Social power was sapped by the constantly increasing amount of wealth siphoned off by the State which, as a consequence, became stronger and bolder. To put it plainly, the State now had the money with which (1) to hire the necessary enforcement personnel for whatever laws it enacted under "emergency" conditions, and (2) to bribe conformance with its purposes. The second method, because it is least susceptible to attack, is most generally used.

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The immunity of persons was violated by the introduction of the conscript army, even during peacetime. It is interesting to note that Lincoln's efforts at conscription in the midst of a war were strenuously and effectively resisted; he did not have the money with which to employ a strong-armed FBI. During the Wilson administration that handicap was overcome by the income tax.

The infamous Sedition Act of 1917, under which thousands were thrown into jail for mere entertainment of an opinion and without the formality of a legal trial -- and which has since become the pattern of all measures to repress thought -- would have remained a dead letter but for an army of paid thugs. Whenever the State deems it necessary to impound the person, the legislation for this is made effective by the police; the police becomes available only when the State can pay the bill; the income tax provides the funds.

The immunity of the mind was violated in more subtle ways, not the least of which is bribery. Whatever else Washington is, it is the most extensive propaganda mill the world has ever known. Every paid clerk is a conscious or unconscious tool in the process, and every bureau aims to fortify its prerogatives by advertising its virtues. Under this bombardment of iteration and reiteration the critical faculties of an economically-weakened people become numb.

The curriculums of schools and colleges are necessarily amenable to the influence of their revenue-sources, and it was inevitable that the concept of individualism should be minimized in institutions enjoying State subsidies. No, the Jeffersonian ideal was not deliberately done away with; it was rationalized out of the curriculum by the insidious influence of economic forces. Nor must we overlook the shaping of pedagogical minds by the prospect of lucrative and glorifying employment in the bureaucracy itself. It is difficult to entertain a critical attitude toward beneficence.

III

Even when the income tax law was being advocated this undermining of intellectual integrity began. In order to gain the support of educators and ecclesiasts, the proponents of the law pointed out how the exemption provisions would prosper the eleemosynary institutions. How could a law encouraging, even by indirection, larger contributions and endowments be a bad law?

The bribery of the public mind through employment and subventions followed as a matter of course, once the State had the means, and now the quip about "buying the election" has become a cynical commonplace.

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With the State the largest single employer, the largest single buyer, the greatest giver the world has ever known, what argument can be effectively brought to bear against its goodness?

Bribery, too, has done away with that decentralization of power by which the revolutionary Americans hoped to safeguard their sacred rights. The 48 commonwealths have simply sold their autonomy to the Washington colossus. What with Federal jobs, gratuities and contracts to hand out, the local politician is no longer beholden to his neighbors for his preferment; on the contrary, they are beholden to him, and he in turn owes his first allegiance to the source of all. In the original concept of the Union the individual was a citizen of his state; now he is a subject of the national government, just as his forebear was a subject of the British Crown.

All this is the consequence -- inevitable consequence -- of the Sixteenth Amendment.

IV

The profit of the American Revolution was the Constitution, and the profit of the Constitution was in the immunities it set up against the government. With these immunities gone, all that was gained at Yorktown in 1781 has been lost. Yes, the American Revolution was indeed lost at Washington in 1913.

Were the Americans of this century of the same cut as those of the Eighteenth, a new revolution would be in order. Certainly, political invasion of private immunities, which led to the Jeffersonian indictment and the war, was not one whit more invidious than what obtains today.

Consider the general charge against George III in the Declaration: "He has erected a multitude of new offices, and has sent hither swarms of officers to harass our people, and eat out their substance". Save in some inconsequential particulars, cannot this exact charge be made now against the Washington bureaucracy?

However, the disposition of the current American is not toward liberty; it is rather toward "security". He identifies rights with parity payments, social security, tariffs, bonuses, free education, subventions. Like Faust, he has sold his soul. And a people without soul is without the power of redemption.

DUE TO THE ABSENCE OF FRANK C. HANIGHEN, NOT MERELY GOSSIP DOES NOT APPEAR THIS WEEK. IT WILL BE RESUMED ON MAY 10.

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European Supplement *to* Human Events Vol. VII, No. 18

By Marion Dönhoff HAMBURG -- May, 1950

DR. PAUL SCHMIDT, "A SUPER ON THE DIPLOMATIC STAGE": Reading the 1000-page report of the former chief interpreter of the German Foreign Office, it becomes clear that there was much to be said for the familiarity of Victorian statesmen with foreign languages. When diplomats were better educated, such a source of history as these recollections was not available to us.

For nearly 25 years there was no single discussion of political importance at which Dr. Schmidt was not present as an interpreter. He began his activities under Stresemann and witnessed how all the milestones of European and German history were reached: The Locarno Conference, the Kellogg Pact, the Godesberg meeting and the Munich Pact. He interpreted during the talks between Stresemann and Briand, between Brüning and MacDonald; Hitler's conversations with Mussolini, Franco, Pétain, Molotov and Antonescu; also the ultimatum which was put to Hacha before the invasion of Czechoslovakia and the historic conferences with Henderson on the eve of the war against Poland, which was the beginning of the Second World War.

The material collected into this volume is more important for an assessment of historical happenings than most documents and files. These hardly ever provide a complete picture without a knowledge of minor circumstances; the more so because a document generally relates to one point only in a whole series of happenings. In this volume, however, discussions and talks have been recorded in great detail, including brief but often very informative personal remarks of the participants in the talks: all set down by a shrewd, experienced, sober man, who has always been known for his phenomenal memory.

Dr. Schmidt puts forward his own views of problems and persons, but he always does it as an observer taking the minutes, never as an actor. The title of his book Statist auf Diplomatischer Bühne ("A Super on the Diplomatic Stage") is therefore a very apt one. No doubt he has played his role better than many of the big stars whom he accompanied across the European stage; and in his own way achieved far more success than the frustrated actors.

* * *

COMMUNIST MUSICAL PROPAGANDA: Johann Sebastian Bach, the famous German composer, who for a quarter of a century lived in Leipzig, died there in the year 1750. We are therefore celebrating the 200th anniversary of his death this year. As Leipzig lies in the Russian zone, the East German Republic uses this opportunity to claim him as a "people's own musician". Such a claim far exceeds the usual bounds of cultural propaganda. It is, however, meant in real earnest and one should never lose sight of this. Even if all this may seem to us ridiculous, and in bad taste, we must realize that any form of propaganda becomes real if only people hear it repeated often enough.

The two chairmen of the SED (Unified Socialist Party of Germany -- the Communist-controlled government party), President Pieck and Minister President Grotewohl, have issued some sort of instructional letter to all sections of the party, in which two theses are put forward: First, contrary to historical and musical teaching, Bach is not a "cosmopolitan" but a "national" composer. Second, in a religious sense he was not orthodox, but pietistic, and that was "the progressive ideology of those times".

Bach festivals, Bach celebrations and Bach concerts of all kinds have been planned, for which a considerable amount of money has been set aside. Again and again the slogan "German national culture" is being brandished with great showman-

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ship, and it is contrasted with the cosmopolitanism of the others: the American "popular song culture and gangster religion". Time and again an almost pathetic appeal is made to patriotism and to the national front. To put it briefly, the similarity of these antics of the East German government with Hitler's ideology is getting more and more grotesque.

The Communist Executive demands that members give their wholehearted support to all shows during the Bach year, because the way to a really objective appreciation of Bach has only been cleared by the armies of the Soviet Union, which have brought about the defeat of the German Fascists and imperialists. The preservation and critical assimilation of national cultural inheritance is one of the fundamental aims of the party of Leninism and Marxism. "In the Bach year we defend our national culture against the efforts of American imperialism to let our culture decay and split. By a stubborn and unrelenting fight against all efforts to falsify Bach and to turn him into an international church musician or formalist in the interests of cosmopolitan propaganda we show the whole German people the national significance of Bach. The carrying out of the Bach year is thus a task of the national front of democratic Germany."

* * *

CONFUSION IN EDUCATION: The breaking up of the school system in Western Germany after the war has come to such a pass that things are approaching an impossible stage. If a man from the American zone wants to move into the French zone, he practically cannot take his children with him, because the educational approach is so different that the children must stay in the place where they commenced their schooling.

In the Eastern zone, there is a not very pleasant, but in any case a uniform curriculum. In Western Germany, however, each of the occupying Powers has exerted a substantial influence on the schools in its zone, and with a view to its pet re-education schemes has tried to achieve as near as possible a replica of its own system of schools. Furthermore, the choice of the most important foreign language to be taught at school depends upon the nationality of the occupying forces: in the French zone, French is being taught; in the former Bizone, English. (In the Russian zone, of course, Russian).

Apart from these zonal dissimilarities the various Länder have their own special regulations. In the American zone, for instance, in Bavaria the school term starts in September; in Hesse, at Easter. Consequently children who move from one school to another within the same zone generally lose one year.

The biggest stumbling block in the way of a uniform organization of our school system, however, is the difference in the number of terms of elementary schools. In the three Länder under Socialist leadership (Hamburg, Bremen, and Schleswig-Holstein), elementary schooling has been fixed at six years; in the other eight Länder, at four years. In the grammar schools the differences are also considerable. In six Länder, grammar school terms have been fixed at nine years, in two Länder at eight years, and in three Länder at seven years.

The federalization concept has in this respect at least brought about much harm, and has only led to a strengthening of the demand for a sensible centralization.

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VIENNA AND "THE THIRD MAN": An Austrian friend of mine recently wrote to me from Vienna and described the impression left by the American film "The Third Man", in Vienna, which city provided the subject and the setting. It seems as if this film, which so plainly and pitilessly describes the years 1945 and 1946 -- the worst Vienna has experienced since 1683 -- has cast a magic spell upon the inhabitants of that city.

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Many Viennese are lining up for the third and fourth time in long queues which are forming daily at the box offices. The Austrian writes: "The astonishing effect appears to lie in the fact that the experiences of those times of hunger, insecurity and unrestricted rule of Allied military police only gain reality through this film. Until now all this seemed like a nightmare, which had nothing to do with the normal recollections of this easy-going, cheerful city, and which therefore seemed so unreal. Only the testimonial of an outsider, who with such impressive means has succeeded in grasping and holding this intangible atmosphere, is a confirmation that all this has been real.

"'Yes, that's how it was, exactly like that', one hears time and again. And it seems as if only at the moment when that phase becomes reality does it become in its true sense a remembrance of the past. Up to now these bad dreams have never been quite ended; tomorrow perhaps it might be the same again. It is no good saying: I don't want to remember all this. For it has never really become a thing of the past; it is still part of a dream and cannot be banned by will-power alone.

"It was a shock to realize that here in Vienna one saw for the first time what one had so far seen only in the towns of the East: in Warsaw, Bucharest, Odessa. And the film also achieved something else. It destroyed the illusion that all that was needed was to shift a little rubble, to have a little bit more money, and to wait for the withdrawal of the Occupation troops in order to resurrect the light-hearted atmosphere of wine, women and song."

Is it a pity that all that has gone? Was it a promising illusion? I doubt it. It is a memorable day when a formerly rich man is told for the first time that it is senseless to give small tips with a big gesture, or an aging woman is told that it would be much better if she were to wear less gaudy colors.

* * *

SHANGHAI TRIAL: On April 17 the Supreme Court of the United States took under advisement the question whether, and to what extent, Americans and non-Americans outside the territory of the United States shall have the right of habeas corpus when they have been sentenced by an American court. The decision will be of the greatest importance, especially for the 21 Germans, who, in 1947, were sentenced to long terms of imprisonment in the so-called Shanghai trial. With the assistance of the Boston lawyer, Frank A. Reel (the officially appointed lawyer of General Yamashita), they applied for habeas corpus to the District Court of the United States for the District of Columbia.

The court at the time rejected the appeal on the ground that the appellants were outside its jurisdiction. In April, 1949, however, the United States Court of Appeals recognized the validity of the appeal, stating that "to deprive a citizen of his only effective remedy would not only be contrary to the rudimentary demands of justice but destructive of a Constitutional guaranty specifically designed to prevent injustice".

The war crimes trial at Shanghai, during which 21 Germans were sentenced to 20 to 30 years' imprisonment, which they are serving in Landsberg in Bavaria, is unique in the history of justice; nothing like it ever happened before. Judge Harry Pitchford, of the State of Oklahoma, who as head of the Commission of Enquiry went over the case in 1948 on instruction by the accused Secretary for Defense, stated with regard to the U. S. Military Court which tried the case in China at the time: "There was no jurisdiction and there was no case".

Why were there any German war criminals in Shanghai and what was the basis for the trial? During the war there existed in Shanghai an office of the counter-espionage department of the German OKW (Supreme Command of the Armed Forces) which had two branch offices in Peking and Canton. The functioning of these offices

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during the war was permitted under international law, and no one, in fact, objected to them. But the continuance of that activity beyond the date of the capitulation on May 8, 1945, until the end of the war with Japan was considered by the court to constitute an infringement of the terms of the armistice. As a matter of fact, the manager and two wireless telegraphists of the Canton Branch Office, who shared offices with the Japanese, continued their activity, whereas the offices in Shanghai and Peking closed down at once.

The Hague Convention explicitly provides that the population of a territory militarily occupied during a war is obliged to follow the instructions of the occupying Power -- in this case the Japanese. It is furthermore obvious that a capitulation will only be valid for those territories which are controlled by the capitulant. Were this not so then General de Gaulle, who continued the fight against Germany from Britain after the French Government had capitulated on June 22, 1940, would also be a war criminal.

It is also very peculiar that within the territory of the sovereign Chinese Republic an American Military Commission could conduct a trial of what were alleged to be German war criminals -- the more peculiar because the London agreement of August 8, 1945, expressly granted the liberated countries jurisdiction over war criminals.

The four American officers who were the judges in this trial, and of whom only the junior officer, a captain, had any legal experience, ignored all these legal aspects. Obviously, what was intended was a political trial. This is evidenced by the text of the telegram in which the war crimes authorities in Shanghai at the time asked Washington for permission to start the trial "because the local political situation makes a trial by an American military court advisable".

The trial started in Shanghai on August 1, 1946, there being 27 accused. The Ambassador and five others were acquitted because no evidence could be produced against them. However, they were not set at liberty and are still today in prison in the U. S. zone of Germany. The secretary of the defense counsel was also jailed without ever being told why.

The remaining 21 accused were defended by two solicitors appointed by the court after a well-known Chinese barrister and a Frenchman, in protest against the methods of the trial, had withdrawn. Sentence was passed, but no reasons were given. After headquarters had been dissolved in October, 1946, a military advisory group remained in Nanking in order to assist Marshal Chiang Kai-shek, but as it was not a supreme Army command it had no jurisdiction. There was therefore no one who could confirm the sentence passed in February, 1947.

General Lucas, chief of the military advisory group, who was really no more than a guest of a foreign government, was thereupon authorized by Washington "to review, confirm and carry out the sentence", a most peculiar proceeding. He confirmed the sentence on the ground of a so-called "legal review" signed by Colonel Edward Young, who had been responsible for the initiation of the trial.

Many experts, neutrals and Americans, have come to the same conclusion as Judge Pitchford in 1948: Neither was the court competent in the Shanghai trial, nor was there a criminal offense to be tried. Nevertheless the wrongly condemned are still in prison and some of them have been in prison since 1945. The 70-year old Consul-General Siebert had a stroke a short while ago; another has died of tuberculosis. Dr. Herbert Müller, honorary member of the Chinese Academy of Science and never a Nazi party member, has gone blind. Hans Mosberg, who as a Jew had to give up his job in Germany and went to China in order to maintain his family, has been sentenced to 20 years' imprisonment. He may well ask which was more inhuman, his fate after 1933 in Germany or his fate in 1945 under American jurisdiction.

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